

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <i>et al.</i> ,	)	Case No. 01-01139 (JKF)
	)	Jointly Administered
	)	
	)	Re: Docket Nos.: 22491, 22386
	)	July 27, 2009, Agenda Items 12, 13
	)	
Debtors.	)	

**AGREED ORDER BETWEEN THE PLAN PROPONENTS AND LIBBY CLAIMANTS  
ON PRETRIAL PROCEEDINGS**

Upon (a) Arrowood's Motion for Relief Against the Libby Claimants Based on Their Designation of Over 100 Witnesses for the Confirmation Hearing (Docket No. 22491); and (b) the Motion for Leave to File Supplement to Libby Claimants' Objections to First Amended Joint Plan of Reorganization (Docket No. 22386) (collectively, the "motions"), due and proper notice of the motions having been given, several objections and replies having been filed by the parties, the Court having heard arguments in open court on July 27, 2009, and the parties being in agreement on the form of this Order;

It is hereby agreed and **ORDERED**:

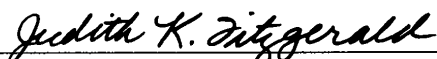
1. Mr. Jon Heberling and Mr. Tom Lewis will not testify at the Confirmation Hearing.
2. With respect to Expert Discovery relating to Libby Claimants and Libby Claimants' Pending Motion to File Supplemental Objections:
  - A. All expert opinions to be proffered at trial and all reliance materials will be limited to those exchanged prior to July 31, 2009, except that:
    1. Drs. Alan Whitehouse, Arthur Frank, and Craig Molgaard may submit a rebuttal report to Dr. Weill's July 24, 2009 Report no later than August 20, 2009, and may testify to matters within the scope of such report, subject to objections based on the Federal Rules of Evidence.

2. Drs. Whitehouse and Molgaard will each submit to a 2-hour deposition limited to that rebuttal report and the Molgaard supplemental report at the earliest available date, in the same city (Missoula, MT or Spokane, WA) but no later than September 2, 2009.
  3. Dr. Arthur Frank will submit to a 2-hour deposition regarding the rebuttal report to Dr. David Weill at the earliest available date in Philadelphia, PA, but no later than September 2, 2009.
  4. Dr. Weill will submit to a deposition at the earliest available date, but no later than September 2, 2009.
  5. Dr. Suresh Moolgavkar will submit a rebuttal report to the Dr. Molgaard July 13, 2009 supplemental report by August 17, 2009 and will submit to a 2-hour deposition limited to that rebuttal report by August 28, 2009.
  6. Dr. Weill filed on August 7, 2009 a brief report responding to Libby Claimants' supplemental objections.
- B. No objections based upon lateness will be made by either side to any of the expert work relating to Libby nor to the Libby Claimants' CDC, NIOSH listed documents and the Public Health Emergency documents.
- C. The Plan Proponents will not rely upon Dr. Weill's July 24, 2009 report in making the Daubert motions, due August 12, 2009, regarding the testimony of Drs. Whitehouse, Frank, Spear, and Molgaard.
- D. The Libby Claimants will have until September 4, 2009 to file any Daubert motions regarding Dr. Weill's July 24, 2009 report, but any such motion is subject to (and will contain no expert materials inconsistent with) the limitations set forth in A. above. Grace will file a response to these Daubert motions on a date to be set by the Court.
- E. The Libby Claimants will be allowed to file their pending supplemental objections regarding the TDP criteria. The motion to file a supplemental objection regarding the effect of accepting benefits under the Plan will be decided by the Court in connection with the pending motion, set for hearing on August 24, 2009. (*See* Dkt. No. 22385.)
3. The Libby Claimants will submit hard copies of their trial exhibits to Grace by August 13. Grace will undertake to Bates Stamp and mark those exhibits (except for such exhibits that have been delivered on CD's) and place them in its electronic data room soon to be available to other parties. As part of this process, the Libby Claimants intend to mark scientific literature, medical records, CV's, and expert reports as exhibits, and will include those copies in the materials submitted on August 13. The Libby Claimants are permitted to amend their pretrial exhibit list to include these exhibits.

4. Both sides reserve all objections to admissibility regarding evidence related to the issues addressed in this discovery order.
5. To date, the parties have been unable to reach an agreement on the remaining issues concerning the Libby individual claimants' testimony, production, and depositions. The parties will submit an agreed proposed order, or separate, competing proposed orders on these matters as soon as possible.

Dated: August 17, 2009

Wilmington, Delaware

  
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The Honorable Judith K. Fitzgerald  
United States Bankruptcy Judge